

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of:

Closed Captioning of Internet)	
Protocol-Delivered Video)	
Programming: Implementation)	MB Docket No. 11-154
of the Twenty-First Century)	
Communications and Video)	
Accessibility Act of 2010)	

REPLY COMMENTS OF

dotSUB

in response to the Commission's
NOTICE OF PROPOSED RULEMAKING

Filed: November 1, 2011

INTRODUCTION AND SUMMARY

dotSUB is a browser-based, crowd-sourced system through which users create and view subtitles for videos in multiple languages across all platforms. The system allows users to upload, transcribe, and create subtitles for their videos and distribute them online by embedding the dotSUB video player onto their websites and blogs. dotSUB also offers professional translation and subtitling services.

As an enterprise committed to making video over IP available to the broadest audience possible, dotSUB supports the Federal Communications Commission's proposed rules in its Notice of Proposed Rule Making ("NPRM") in the above-captioned matter .¹

Portable devices are playing an increasingly important role in the lives of consumers of IP-delivered video. Thus, dotSUB believes Section 203 of the Communications and Video Accessibility Act of 2010 ("CVAA") should apply to *all* devices capable of, and intended for, streaming video over IP, including smartphones and other mobile devices. To that end, we respectfully submit the following reply comments regarding Section 203 of the CVAA.

REPLY COMMENTS

¹ Closed Captioning of Internet-Protocol Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010, 76 Fed. Reg. 59,963 (proposed Sept. 19, 2011) (to be codified at 47 C.F.R. pt. 15, 79) [hereinafter NPRM].

Under section 203(a) of the CVAA, Internet-connected devices that consumers use to watch video must be able to display closed captioning.² In order to implement this provision, Congress requested the Commission establish a rule requiring all apparatus designed to receive or play back video with sound have the necessary built-in hardware that would enable such a device to decode closed captioned data.³ Section 203 provides limitations on the definition of “apparatus,” limiting the scope of 203 as follows: (1) that requirements do not apply to devices with display-only video monitors with no playback capability; (2) that the requirements must be “achievable” for devices with picture screens less than 13 inches; and (3) that the Commission may waive the requirements for devices primarily designed for activities other than viewing video over IP and devices with multipurpose functionality that can play video over IP, but have some other “essential utility.”⁴

In considering these limitations, the Commission requested comments on what should constitute an “apparatus” covered by section 203.⁵ More specifically, the Commission requested comments on how to define the “essential utility” of a device, such that the device might be exempted from closed captioning requirements.⁶ Various parties in interest have put forth relevant suggestions. Given our mission to promote the widespread adoption

² *Id.* at 59976 ¶ 48.

³ *Id.* at 59976-77, ¶ 49.

⁴ *Id.* at 59976-77, ¶ 48-49.

⁵ *Id.* at 59977, ¶ 49.

⁶ *Id.*

of closed captioning, we agree with many of the comments submitted by deaf or hard of hearing individuals and advocacy groups for the deaf and the hard of hearing. Moreover, we disagree with many of the comments put forth by members of the telecommunications and content industry.

First, we support the Commission's proposal to eliminate any screen size specifications from the rules.⁷ We oppose the position taken by the Digital Media Association and Motorola Mobility: that manufacturers of devices with picture screens less than 13 inches should be afforded greater flexibility in their adherence to the closed captioning rules.⁸ As Larry Goldberg points out in his comments, research shows that captions can be readable on devices with screens as small as one inch.⁹ The tremendous improvements in digital technology that have taken place in recent years make the 13-inch exemption obsolete.¹⁰ Moreover, as more and more people consume video on small, portable devices,¹¹ it is even more important to

⁷ *Id.* at 59977, ¶ 52.

⁸ Comments of the Digital Media Association, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6016846204>; Ex Parte Comments of Motorola Mobility, Inc., <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021734284>.

⁹ Comments of Larry Goldberg, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6016846105>.

¹⁰ *Closed Captioning Decoders*, NAT'L ASS'N OF THE DEAF, <http://www.nad.org/issues/television-and-closed-captioning/closed-captioning-decoders> (last visited Oct. 29, 2011).

¹¹ There were nearly 25 million mobile video users at the end of 2010, an increase of 40% over the previous year, and recent Nielsen data shows that the numbers are steadily increasing. *Is Mobile Video Viewing Taking Off?*, EMARKETER, Apr. 6, 2011, <http://www.emarketer.com/%28S%28n55bpj45hwkswinzi04dfh45%29%29/Art>

require closed captioning on all Internet-connected media-players, regardless of screen size; otherwise, a large subset of the population will be precluded from consuming online video in this manner, and some will be precluded from consuming online video at all.¹²

Next, we are opposed to exempting devices primarily designed for non-video purposes, and devices that have an “essential utility” other than receiving and watching video, from the closed captioning requirements. Regardless of how one defines a device’s “essential utility,” many video-ready mobile devices, such as smartphones, would be swept into these broad exemptions.¹³ This would mean that mobile devices would be exempt from the proposed closed captioning rules. This is problematic for the reasons stated above. Furthermore, as Telecommunications for the Deaf and Hard of Hearing, Inc., and the other consumer groups eloquently stated in their comments, “[a] device’s utility is in the eye of its user, not its designer, the

icle.aspx?R=1008321. Seventy-seven percent of those surveyed in March 2011 said they were watching more mobile TV and video than they were a year earlier. *Id.*

¹² A recent Pew Internet & American Life study found that about 3% of U.S. adults rely on the mobile Internet as their primary means of accessing the web because they lack a reliable home broadband connection. AARON SMITH, PEW INTERNET & AMERICAN LIFE PROJECT, 35% OF AMERICAN ADULTS OWN A SMARTPHONE: ONE QUARTER OF SMARTPHONE OWNERS USE THEIR PHONES FOR MOST OF THEIR ONLINE BROWSING 3 (Jul. 11, 2011), http://www.pewinternet.org/~media/Files/Reports/2011/PIP_Smartphones.pdf.

¹³ Comments of CTIA – The Wireless Association, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6016846226>.

Commission, or anyone else.”¹⁴ Today’s mobile devices serve many different functions: iPods play video, Androids play music, and millions of Americans use their cell phones as an alarm clock. These are just several examples to illustrate the difficulty and naïveté of categorizing devices by their “essential utility.”

Finally, we strongly oppose the blanket waiver for smartphones and similar devices proposed by TechAmerica.¹⁵ Instead, we support the policy of expanding video over IP to the broadest audience possible. In a world that is moving toward the use of mobile devices as the primary means of consuming media,¹⁶ this blanket waiver has the potential to leave a large portion of society on the wrong side of the digital divide.¹⁷

In sum, we fully advocate for the expansion of closed captioning requirements to all types of technological devices capable of playing video. In today’s constantly evolving technological landscape, it would be a tragic oversight to exempt broad categories of devices from the rules and thereby leave consumers who are physically disadvantaged without means to access

¹⁴ Comments of Telecommunications for the Deaf and Hard of Hearing, Inc., et. al., <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6016846205>.

¹⁵ Comments of TechAmerica, <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6016846175>.

¹⁶ Ex Parte Comments of the Mobile Internet Content Coalition, WT Docket No. 08-7, March 9, 2011, <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021033944>.

¹⁷ Comments of Telecommunications for the Deaf and Hard of Hearing, Inc., *supra* note 14.

video content on the same level as their hearing peers.¹⁸ We therefore support TDI and other consumer groups' recommended goal of "accessibility by design,"¹⁹ which would move the entire industry down a path of inclusion rather than force burdensome constraints on hard of hearing consumers in their choice of devices.

Respectfully submitted,

/s/

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David Orban
CEO, dotSUB
360 E. 72nd Street # C3104
New York, NY 10021

¹⁸ *See id.*

¹⁹ *Id.*